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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. D1 2006 205

OAH No. 2009030167

ALDEN G. DAVIS  
4137 61<sup>st</sup> Street  
Los Angeles, California 90043

**FIRST AMENDED ACCUSATION  
AND PETITION TO REVOKE  
PROBATION**

Respiratory Care Practitioner License No. 26416,  
Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this First Amended Accusation and  
Petition to Revoke Probation solely in her official capacity as the Executive Officer of the  
Respiratory Care Board of California, Department of Consumer Affairs (Board). The Accusation  
in this matter was filed on April 2, 2008.

2. On or about August 7, 2007, the Board issued Respiratory Care  
Practitioner License No. 26416 to Alden G. Davis (Respondent). This license is valid and will  
expire on February 28, 2010, unless renewed.

3. In a disciplinary action entitled "*In the Matter of the Statement of Issues  
Against Alden G. Davis*," Case No. S-377, the Board issued a decision effective August 7, 2007,

1 in which Respondent was issued a probationary license for a period of three (3) years with certain  
2 terms and conditions. Violation of the terms and conditions of probation subjects Respondent to  
3 revocation of his probationary license, pursuant to the Board's decision. A copy of that decision  
4 is attached as Exhibit A and is incorporated herein by reference.

#### 5 JURISDICTION

6 4. This First Amended Accusation and Petition to Revoke Probation is  
7 brought before the Board under the authority of the following laws. All section references are to  
8 the Business and Professions Code (Code) unless otherwise indicated.

9 5. Section 3710 of the Code states: "The Respiratory Care Board of  
10 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
11 8.3, the Respiratory Care Practice Act]."

12 6. Section 3710.1 of the Code states: "Protection of the Public shall be the  
13 highest priority for the Respiratory Care Board of California in exercising its licensing,  
14 regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with  
15 other interests sought to be promoted, the protection of the public shall be paramount."

16 7. Section 3718 of the Code states: "The board shall issue, deny, suspend,  
17 and revoke licenses to practice respiratory care as provided in this chapter."

18 8. Section 3754 of the Code states: "The board may deny an application for,  
19 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions  
20 upon, a license in any decision made after a hearing, as provided in Section 3753."

21 9. Section 3750.5 of the Code states:  
22 "In addition to any other grounds specified in this chapter, the board may deny,  
23 suspend, or revoke the license of any applicant or license holder who has done any of the  
24 following: . . .

25 (b) Used any controlled substance as defined in Division 10 (commencing with  
26 Section 11000) of the Health and Safety Code. . . ."

27 10. Health and Safety Code Section 11054, subdivision (a), states: "The  
28 controlled substances listed in this section are included in Schedule I."



1 by the Board.

2 At all times, Respondent shall fully cooperate with the Board or any of its  
3 representatives, and shall, when directed, appear for testing as requested, and  
4 submit to such tests and samples for the detection of alcohol, narcotics, hypnotics,  
5 dangerous drugs or other controlled substances.

6 If Respondent is unable to provide a specimen in a reasonable amount of  
7 time from the request, while at the work site, Respondent understands that any  
8 Board representative may request from the supervisor, manager or director on  
9 duty to observe Respondent in a manner that does not interrupt or jeopardize  
10 patient care in any manner, until such time Respondent provides a specimen  
11 acceptable to the Board.

12 Failure to submit to testing or appear as requested by any Board  
13 representative for testing, as directed, shall constitute a violation of probation, and  
14 shall result in the filing of an accusation and/or a petition to revoke probation  
15 against Respondent's respiratory care practitioner license.

16 17. Respondent's probation is subject to revocation because he failed to  
17 comply with Probation Condition 3, referenced above. He failed to appear and submit to drug  
18 testing numerous times. He failed to participate and fully cooperate in a drug screening program.  
19 The facts and circumstances regarding this violation are as follows:

20 A. As part of Respondent's random drug testing program administered by  
21 Compass Vision, Inc. (CVI), Respondent was required to telephone CVI daily to  
22 determine if he needed to provide a specimen for testing and analysis. Respondent was  
23 advised that he was to appear and submit to testing on the following dates: December 14,  
24 2007; November 12, and December 26, 2008. On these days, despite being advised,  
25 Respondent failed to appear and submit to drug testing.

26 B. On March 4, 2008, Respondent initially appeared and submitted to drug  
27 testing. However, the specimen was not acceptable because its temperature did not  
28 register on the temperature thermometer on the collection bottle with the appropriate

1 degree of warmth. Therefore, he was directed to provide a second specimen. He refused  
2 to do so and left the collection site. Respondent failed to submit to drug testing on this  
3 date.

4 C. Respondent failed to telephone CVI on the following dates: October 18  
5 and 31, 2007; November 15, 17, 19, and 23, 2007; December 8, 11, 15, 19, 23 and 31,  
6 2007; January 2, 14, 18, 22, and 28, 2008; February 5, 7, 12, 14, 21, and 28, 2008; March  
7 3, 8, 12, 17, 18, 22, 26, and 31, 2008; April 1, 4, 11, 15, 16, 18, 19, 21, 26, 29, and 30,  
8 2008; May 1, 2, 3, 4, 5, 9, 10, 17, 20, 23, and 28, 2008; June 2, 7, 10, 15, 16, and 18,  
9 2008; July 3, 4, 8, 9, 12, 13, 16, 22, 24, 27 and 31, 2008; August 3, 8, 10, 12, 16, 18, 20,  
10 and 26, 2008; September 3, 8, 10, 12, 15, 20, 23 and 29, 2008; October 4, 5, 8, 12, 14, 18,  
11 19, 21, 25, and 31, 2008; November 4, 6, 9, 16, 17, 26, 27, and 29, 2008; December 2, 4,  
12 6, 7, 8, 9, 11, 12, 13, 14, 17, 18, 22, 23, 25, 27, 29, 30, and 31, 2008; January 1, 6, 9, 10,  
13 11, 14, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 29, 30, 31, 2009; February 1, 2, 4, and 5,  
14 2009. As of the filing date of this First Amended Accusation and Petition to Revoke  
15 Probation, Respondent's last call to CVI. On the dates listed above and since February 7,  
16 2009, by failing to telephone CVI, Respondent failed to participate and fully cooperate in  
17 his drug screening program.

18 D. Of the listed dates that Respondent failed to telephone CVI, Respondent  
19 was scheduled to provide a specimen for testing and analysis on March 12, 2008, January  
20 6, 10, 14, 2009, February 4, 2009, March 11, 2009, and June 15, 2009. Respondent failed  
21 to provide a specimen as required on these dates.

## 22 SECOND CAUSE TO REVOKE PROBATION

### 23 (Abstain from Use of Drugs and Alcohol)

24 18. At all times after the effective date of Respondent's probation, Condition 4  
25 stated:

26 Respondent shall completely abstain from the possession or use of alcohol,  
27 controlled substances, dangerous drugs, and any and all other mood altering drugs,  
28 substances and their associated paraphernalia, except when the drugs are lawfully

1 prescribed by a licensed practitioner as part of a documented medical treatment.

2 . . .

3 Respondent shall ensure that he is not in the presence of or in the same  
4 physical location as individuals who are using illegal substances, even if  
5 Respondent is not personally ingesting the drug(s).

6 Any positive result that registers over the established laboratory cutoff  
7 level shall constitute a violation of probation and shall result in the filing of an  
8 accusation and/or a petition to revoke probation against Respondent's respiratory  
9 care practitioner license . . .

10 19. Respondent's probation is subject to revocation because he failed to  
11 comply with Probation Condition 4, referenced above. The facts and circumstances regarding  
12 this violation are as follows:

13 A. On December 15, 2007, Respondent provided a urine specimen to CVI for  
14 drug testing and analysis. Respondent's urine specimen resulted in a positive result that  
15 tested over the laboratory cutoff level for Cannabinoids<sup>1</sup>, a controlled substance.

16 B. On February 26, 2009, Respondent provided a urine specimen to CVI for  
17 drug testing and analysis. Respondent's urine specimen resulted in a positive result that  
18 registered over the laboratory cutoff level for Cannabinoids, a controlled substance.

19 THIRD CAUSE TO REVOKE PROBATION

20 (Obey All Laws)

21 20. At all times after the effective date of Respondent's probation, Condition 6  
22 stated:

23 Respondent shall obey all laws, whether federal, state, or local.

24 Respondent shall also obey all regulations governing the practice of respiratory

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25  
26 1. Cannabinoids contain THC (delta-9-tetrahydrocannabinol), the main active chemical in  
27 marijuana. Marijuana is a Schedule I controlled substance under Health and Safety Code  
28 section 11054, subdivision (d) (13). Additionally, it is a mood altering drug within the meaning  
of Probation Condition 4.

1 care in California.

2 Respondent shall notify the Board in writing within 14 days of any  
3 incident resulting in his arrest, or charges filed against, or a citation issued against  
4 Respondent.

5 21. Respondent's probation is subject to revocation because he failed to  
6 comply with Probation Condition 6, referenced above. The facts and circumstances regarding  
7 this violation are as follows:

8 Respondent violated section 3750.5, subdivision (b) of the Code in that he used  
9 controlled substances, specifically Cannabinoids. The facts and circumstances set forth in  
10 Paragraph 19 of this First Amended Accusation and Petition to Revoke Probation are  
11 incorporated herein by reference.

12 FOURTH CAUSE TO REVOKE PROBATION

13 (Quarterly Reports)

14 22. At all times after the effective date of Respondent's probation, Condition 7  
15 stated:

16 Respondent shall file quarterly reports of compliance under penalty of  
17 perjury, on forms to be provided to the probation monitor assigned by the Board.  
18 Omission or falsification in any manner of any information on these reports shall  
19 constitute a violation of probation, and shall result in the filing of an accusation  
20 and/or a petition to revoke probation against Respondent's respiratory care  
21 practitioner license.

22 Quarterly report forms will be provided by the Board. Respondent is  
23 responsible for contacting the Board to obtain additional forms if needed.

24 Quarterly reports are due for each year of probation and the entire length of  
25 probation as follows:

26 For the period covering January 1<sup>st</sup> through March 31<sup>st</sup>, reports are to be  
27 completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering  
28 April 1<sup>st</sup> through June 30<sup>th</sup>, reports are to be completed and submitted between

1 July 1<sup>st</sup> and July 7<sup>th</sup>. For the period covering July 1<sup>st</sup> through September 30<sup>th</sup>,  
2 reports are to be completed and submitted between October 1<sup>st</sup> and October 7<sup>th</sup>.  
3 For the period covering October 1<sup>st</sup> through December 31<sup>st</sup>, reports are to be  
4 completed and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

5 Failure to submit complete and timely reports shall constitute a violation  
6 of probation.

7 23. Respondent's probation is subject to revocation because he failed to  
8 comply with Probation Condition 7, referenced above. The facts and circumstances  
9 regarding this violation are as follows:

10 A. Respondent failed to timely submit his quarterly report of compliance for  
11 the period August 7 through September 30, 2007. It was due October 7, 2007, but the  
12 Board did not receive it until December 31, 2007.

13 B. Respondent failed to timely submit his quarterly report of compliance for  
14 the period January 1 through March 31, 2008. It was due April 7, 2008, but the Board did  
15 not receive it until December 19, 2008.

16 C. Respondent failed to timely submit his quarterly report of compliance for  
17 the period April 1 through June 30, 2008. It was due July 7, 2008, but the Board did not  
18 receive it until September 2, 2008.

19 D. Respondent failed to timely submit his quarterly report of compliance for  
20 the period July 1 through September 30, 2008. It was due October 7, 2008, but the Board  
21 did not receive it until December 19, 2008.

22 E. Respondent failed to submit his quarterly report of compliance for the  
23 period October 1 through December 31, 2008. It was due January 7, 2009.

24 F. Respondent failed to submit his quarterly report of compliance for the  
25 period January 1 through March 31, 2009. It was due April 7, 2009.

26 FIFTH CAUSE TO REVOKE PROBATION

27 (Probation Monitoring Costs)

28 24. At all times after the effective date of Respondent's probation, Condition 9



1 stated:

2 All costs incurred for probation monitoring during the entire probation shall be  
3 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or  
4 increased. Respondent's failure to comply with all terms and conditions may also cause  
5 this amount to be increased.

6 All payments for costs are to be sent directly to the Respiratory Care Board and  
7 must be received by the date(s) specified. (Periods of tolling will not toll the probation  
8 monitoring costs incurred.)

9 If Respondent is unable to submit costs for any month, he shall be required instead  
10 to submit an explanation of why he is unable to submit the costs, and the date(s) he will  
11 be able to submit the costs including payment amount(s). Supporting documentation and  
12 evidence of why the Respondent is unable to make such payment(s) must accompany this  
13 submission.

14 Respondent understands that failure to submit costs timely is a violation of  
15 probation, and submission of evidence demonstrating financial hardship does not  
16 preclude the Board from pursuing further disciplinary action. However, Respondent  
17 understands providing evidence and supporting documentation of financial hardship may  
18 delay further disciplinary action.

19 In addition to any other disciplinary action taken by the Board, an unrestricted  
20 license will not be issued at the end of the probationary period and the respiratory care  
21 practitioner license will not be renewed, until such time all probation monitoring costs  
22 have been paid.

23 The filing of bankruptcy by Respondent shall not relieve the Respondent of his  
24 responsibility to reimburse the Board for costs incurred.

25 25. Respondent's probation is subject to revocation because he failed to  
26 comply with Probation Condition 9, referenced above. The facts and circumstances regarding  
27 this violation are as follows:

28 Respondent is delinquent in his probation monitoring costs in the amount of

1 \$300.00 for the months of May and June 2009.

2 SIXTH CAUSE TO REVOKE PROBATION

3 (Change of Employment or Residence)

4 26. At all times after the effective date of Respondent's probation, Condition  
5 12 stated:

6 Respondent shall notify the Board, and appointed probation monitor, in writing, of  
7 any and all changes of employment, location, and address within 14 days of such change.  
8 This includes, but is not limited to, applying for employment, termination or resignation  
9 from employment, change in employment status, change in supervisors, administrators or  
10 directors.

11 Respondent shall also notify his probation monitor AND the Board IN WRITING  
12 of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted  
13 for mailing purposes, however, the Respondent must also provide his physical residence  
14 address as well.

15 27. Respondent's probation is subject to revocation because he failed to  
16 comply with Probation Condition 12, referenced above. The facts and circumstances regarding  
17 this violation are as follows:

18 As of June 11, 2009, Respondent had failed to notify the Board and his appointed  
19 probation monitor in writing that he was terminated from his employment on May 5,  
20 2009.

21 SEVENTH CAUSE TO REVOKE PROBATION

22 (Cost Recovery)

23 28. At all times after the effective date of Respondent's probation, Condition  
24 13 stated:

25 Respondent shall pay to the Board a sum not to exceed the costs of the  
26 investigation and prosecution of this case. That sum shall be \$3,061.25 and shall be paid  
27 in full directly to the Board, in equal quarterly payments, within 12 months from the  
28 effective date of this decision. Cost recovery will not be tolled.

1 If Respondent is unable to submit costs timely, he shall be required instead to  
2 submit an explanation of why he is unable to submit these costs in part or in entirety, and  
3 the date(s) he will be able to submit the costs including payment amount(s). Supporting  
4 documentation and evidence of why the Respondent is unable to make such payment(s)  
5 must accompany this submission.

6 Respondent understands that failure to submit costs timely is a violation of  
7 probation, and submission of evidence demonstrating financial hardship does not  
8 preclude the Board from pursuing further disciplinary action. However, Respondent  
9 understands that providing evidence and supporting documentation of financial hardship  
10 may delay further disciplinary action.

11 Consideration to financial hardship will not be given should Respondent violate  
12 this term and condition, unless an unexpected AND unavoidable hardship is established  
13 from the date of this order to the date payment(s) is due.

14 The filing of bankruptcy by the Respondent shall not relieve the Respondent of his  
15 responsibility to reimburse the Board for these costs.

16 29. Respondent's probation is subject to revocation because he failed to  
17 comply with Probation Condition 13, referenced above. The facts and circumstances regarding  
18 this violation are as follows:

19 Respondent is delinquent in his cost recovery in the amount of \$1,561.25.

20 CAUSE FOR DISCIPLINE

21 (Use of a Controlled Substance)

22 30. Respondent is subject to disciplinary action under section 3750.5,  
23 subdivision (b) of the Code, in that he used controlled substances, specifically Cannabinoids.  
24 The facts and circumstances set forth in Paragraph 19 of this First Amended Accusation and  
25 Petition to Revoke Probation are substantially related to the qualifications, functions or duties of  
26 a respiratory care practitioner, and are incorporated herein by reference.

27 ///

28 ///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking the probation that was granted by the Respiratory Care Board of  
5 California in Case No. S-377;

6 2. Revoking or suspending Respiratory Care Practitioner License No. 26416  
7 issued to Alden G. Davis;

8 3. Ordering Alden G. Davis to pay the Respiratory Care Board the costs of  
9 the investigation and enforcement of this case, and if probation is continued or extended, the  
10 costs of probation monitoring; and

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: July 1, 2009

13  
14  
15 Original signed by Colleen Whitestine for:  
16 STEPHANIE NUNEZ  
17 Executive Officer  
18 Respiratory Care Board of California  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant  
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